IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.9771 OF 2003

M/s. Umang Enterprises through its
Proprietor Rahimtulla Shaikh ... Petitioner

V/s.

The Superintending Engineer (VC)
M.S.E.B. and Ors. ... Respondents

Mr.L.M. Acharya for Petitioner
Mr.M.V. Jayakar for Respondent Nos.1 to 3
Mr.R.M. Patne, AGP, for Respondent No.4

CORAM: **H.L. GOKHALE &**
SMT.NISHITA MHATRE, JJ.

DATED: **SEPTEMBER 24, 2004**

P.C.:

. Heard Mr.Acharya for the Petitioner. Mr.Jayakar appears for Respondent Nos.1 to 3 and Mr.Patne, Assistant Government Pleader for Respondent No.4. This Petition was admitted on 30.8.2004 by another Division Bench which issued rule on interim relief. The interim relief in this Petition is to direct the Respondents to give a new electric connection to the Petitioner to their plot situated at Boisar, Tarapore in the District of Thane. The prayer is on the footing that the Petitioner is an auction purchaser of the concerned property and it is being asked to clear the arrears of electricity dues of the party from whom the Petitioner has purchased the property in auction. The main prayer in the Petition is to declare the demand to pay the arrears as contrary to law. The interim prayer is seeking a direction to grant a new connection.

Mr.Acharya, learned Advocate for the petitioner, has relied upon the judgment of the Apex Court in the case *Isha Marbles v/s. Bihar State Electricity Board & Anr. & Ors.*, **(1995) 2 SCC 648** which is again reiterated to a very large extent by the Apex Court in *Ahmedabad Electricity co. Ltd. v/s. Gujarat Inns Pvt. Ltd.,* **2004(5) ALL MR (S.C.) 550**. Mr.Acharya has drawn our attention particularly to para 3 of the latter order wherein the Apex Court has stated in clear terms that in case of a fresh connection though the premises are the same, the auction purchaser cannot be held liable to clear the arrears incurred by previous owner in respect of the power supplied to the premises in the absence of there being a specific statutory provision in this regard. He is, therefore, pressing interim prayer clause (b).

2. Mr.Jayakar appearing for Respondent Nos.1 to 3, submits that there is an agreement entered into by the earlier party and under that agreement, the liability is declared on behalf of the successor or successor in business and permitted assigns. He has also drawn our attention to a Division Bench judgment of Kerala High Court in the case of *K.J. Dennis & Ors. v/s. Official Liquidator, Kochi Ors,* **AIR 2001 KERALA 380** and particularly paragraph 9 thereon. From this judgment what we find is that this is not a case of a third party

coming in as a result of auction. In any case, the clarification of the law by Apex Court in the case of *Ahmedabad Electricity Co. Ltd.* (supra) binds this petition. Mr.Acharya has drawn our attention to section 43(1) and 43(3) of the New Electricity Act of 2003 under which there is a duty cast on the licensee to supply electricity on request within one month of the application.

3. In this state of affairs, in our view, the prayer clause (b) is a legitimate one. Accordingly, we direct respondent Nos.1 to 3 to make available a new electricity connection to the Petitioner at the concerned plot which they shall do within one month as required under the Statute.

4. Mr.Jayakar applies for stay of this order. The request is rejected inasmuch as all that we have done is to follow the law laid down by the Apex Court.

5. Writ Petition is disposed of accordingly.

6. Parties will act on an authenticated copy of this order.

(H.L. Gokhale, J.)

(Nishita Mhatre, J.)